



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

### Docket No. USCG-2022-0226

### RIN 1625-AA09

### Drawbridge Operation Regulation; Milford Haven, Hudgins, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the SR223 (Gwynn's Island) Bridge, across Milford Haven, mile 0.1, at Hudgins, Virginia. This proposed temporary modification will allow the drawbridge to be maintained in the closed-to-navigation position and is necessary to accommodate bridge maintenance. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before July 1, 2022. The Coast Guard anticipates that this proposed rule will be effective from 2 a.m. on August 19, 2022, through 11 p.m. on April 15, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-2026 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the

**SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Ms. Crystal Tucker, Bridge Administration Branch Fifth District, Coast Guard telephone 757-398-6422, email [Crystal.k.tucker@uscg.mil](mailto:Crystal.k.tucker@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

### **II. Background, Purpose and Legal Basis**

The Virginian Department of Transportation, who owns and operates the SR223 (Gwynn's Island) Bridge, across Milford Haven, mile 0.1, at Hudgins, Virginia, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to facilitate maintenance of the drawbridge.

The SR223 (Gwynn's Island) Bridge, across Milford Haven, mile 0.1, at Hudgins, Virginia has a vertical clearance of 12 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operating schedule for the drawbridge is published in 33 CFR 117.5.

This proposed rule is necessary to facilitate safe and effective bridge maintenance of the drawbridge, while providing for the reasonable needs of navigation. Vessels that can safely transit through the bridge in the closed position with the reduced clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety. The SR223 (Gwynn's Island) Bridge is the only land-based method for access on and off Gwynn's Island, therefore, placing the bridge in the open position to perform extensive bridge maintenance would adversely affect residents on the island.

### **III. Discussion of Proposed Rule**

Under this proposed rule, the drawbridge will be maintained in the closed-to-navigation position twenty-four hours a day, seven days a week from 2 a.m. on August

19, 2022, through 11 p.m. on April 15, 2023. This proposed rule is necessary to accommodate extensive maintenance on the SR223 (Gwynn’s Island) Bridge.

The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced vertical clearance may do so, if at least a thirty-minute notice is given, to allow for navigation safety.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is a result of pre rulemaking coordination with maritime stakeholders including federal agencies. This proposed rule effectively balances the competing interests of land and maritime transportation.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV, *A* above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2022-0226 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Add §117.1017T to read as follows:

#### **§ 117. 1017T Milford Haven**

The draw of the SR223 (Gwynn's Island) Bridge, mile 0.1, in Hudgins, need not be open for vessels from 2 a.m. on July 19, 2022, through 11 p.m. on April 15, 2023.

Dated: June 8, 2022.

S. N. Gilreath  
Rear Admiral U.S. Coast Guard  
Commander, Fifth Coast Guard District